Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re	:	
Review of the Prime Time Access Rule,	:	MM Docket No. 94-123
Section 73.658(k)	:	
of the Commission's Rules	:	

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REPLY COMMENTS OF FRIENDS OF PRIME TIME ACCESS

Reply comments in Commission proceedings typically respond primarily to initial comments filed by opponents and allies. However, actual events affecting Prime Time Access Rule issues are unfolding so fast that they practically write the following reply comments by our group of independent producers and syndicators of first-run television programming.

We represent a broad variety of companies all over the country. Some of us are middle-size. Others are small or very small. Some are minority-owned. Some are run by women. We produce everything from documentaries dealing with health, women's, children's and racial issues to game shows and concerts.

Over the years, some of us have had programs on network affiliates in Access Time. Every company in our group aspires to land a show in that time period someday. It is the dream of aspiring producers and the key to growth that enables creation of programming for other time periods.

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We are the people that the Rule was intended to reach and encourage. The successes that our companies have had in Access time would not have been possible without the Rule. It opened up that marketplace, that one prime time broadcast hour, to ALL producers and syndicators. If the Rule goes away, or if even "only" the off-network limitation ends, so does any real opportunity for an independent producer to launch a program successfully in Access.

The Economic Report already submitted to the Commission by the Law and Economics Consulting Group, Inc., prepared for Association of Independent Television Stations, Inc.; King World Productions, Inc. and Viacom, Inc., shows that:

- Although the must-carry rule, at least for now, brings independent, UHF stations into cabled homes, about 37 percent of the American people still do not subscribe to cable. This leaves these stations not nearly a substitute for VHF network-owned or affiliated stations in audience reach or financial resources needed by producers in order to launch high quality, first-run programs.

- Cable networks and systems are even less able to foster such programming.

- The end of the PTAR or of the off-network provision would see network affiliates outbidding independent stations for the best off-network programs. Affiliates would grow stronger. Independents would become weaker and even less able to afford such first-run programs.

- Furthermore, a first-run program needs clearance on dominant stations in the top 50 markets in order to get off the ground and thereby become available to stations in the lower markets.

All of this leaves independent producers of first-run programming with one place they must be able to go...to stations owned by or affiliated with networks. And, as we said, current events already are closing the door to that place for independent producers and distributors.

The remaining Financial Interest and Syndication Rules are scheduled to disappear in November. There will then be no limits on how much network and syndicated programming or on how many time periods the networks can control, especially if either the PTAR off-network limitation or the entire PTAR is eliminated.

Already, the networks are producing ever more of their own programming. Now, NBC has purchased a half-hour comedy from CBS Entertainment Production for network exhibition next Fall. What's more, NBC gets half of the executive producer's 50 percent equity in the show.

Suddenly, both NBC and CBS have potential syndication revenues from a program enhanced by its impending exposure in an extremely favorable NBC network time period (following "Seinfeld").

John Agoglia, president of NBC Enterprises, in the May 22nd issue of 'Electronic Media," said the deal reflects a new network world in which many studio suppliers have networks of their own and vice versa. "We're all in this boat together, and we either bail or sink."

As a matter of fact, the networks already are producing and/or buying into many, even up to one-half, of the entertainment programs they're carrying. When the most successfully of these shows go into syndication. they will consume critical Access slots on the stations the networks own and on their affiliates. Not much "shelf space" will be left for independent producers.

Comments filed by the Chief Counsel for Advocacy of the U.S. Small Business Administration, an expert, impartial, government agency, predict the networks will have the incentive--and potential power--to convince their affiliates to purchase network produced and syndicated programming.

As the SBA puts it, "Networks might modify their affiliation agreements requiring that their affiliates purchase network syndicated programming. Or networks might increase payments to affiliates for airing of network programming as an inducement to purchase network syndicated programming. Independent producers do not have the same market access or power to entice network affiliates to purchase their programming."

The SBA concludes, "In some areas, such as New York or Los Angeles, where all the major networks also own television stations, it would be highly improbable that these stations would not purchase the off-network syndicated programming produced by the network parent. Thus, elimination of the off-network restriction, rather than increasing programming diversity, will actually decrease programming diversity for some of the largest markets in the United States."

The convergence of stations, studios and networks is placing an ever higher premium on distribution...on access to time slots. Michael Wolf, head of the media and entertainment division of management consultant Booz Allen & Hamilton, in the May 15th issue of "Advertising Age," expects that independent program suppliers, who lack guaranteed retail space from local TV stations, will be virtually squeezed out of network and syndicated programming time periods including the prime Time Access hour.

Tim Duncan, executive director of the Advertiser Syndicated Television Association, in the same "Advertising Age" report, says the name of this game is "shelf space." Echoing the SBA, he says the networks are paying higher compensation to affiliates as "slotting allowances. And just as packaged goods marketers pay grocery stores for distribution, the networks are paying stations to get facings, or shelf space for their programs."

Reflecting on CBS's recently having to switch from VHF to UHF affiliates in some markets, he concludes, "In effect, CBS' ratings are down because they've moved from Wal-Mart to mom-and pop stores in a lot of markets. It's the difference between being one a VHF station and a UHF."

Furthermore, the Commission and Congress are considering legislation and regulation that would raise the national coverage limit on station ownership to 35 or 50 percent. This means an alliance of only two station groups, which could even be owned by networks, could cover the entire country.

How easy it will be for just a few vertically integrated owners of programming and dominant stations in major markets to fill up all of the essential time slots and block everyone else from the Access marketplace!

PTAR is doing what the Commission intended. It has stimulated the growth of independent television stations and of independent producers...leading to greater choices of stations and programs for consumers.

There are five times as many independent television stations today as there were when the Commission wrote the PTAR in 1970.

The number of companies offering video programming has more than doubled in the last 15 years.

In the top 50 markets, network affiliates broadcast over 50 hours of local news and other local programming in Access. They air 18 different non-locally produced programs.

Dozens of national programs have come and gone in those affiliates' Access periods.

As we mentioned at the outset, our companies have produced and distributed some of those shows. The PTAR is our only hope for doing so in the future.

The Small Business Administration agreed, "...the PTAR has done an admirable job of creating the appropriate incentives needed to foster a healthy independent programming sector. Repeal of the restriction will simply further enhance the power of networks in their battle with independent syndicators. The Office of Advocacy sees no reason to further strengthen the hand of the networks at the expense of hundreds of independent video programmers and distributors--the majority of whom are small businesses."

Because more than 37 percent of the public still relies on over-the-air broadcasting for video programming, "The Office of Advocacy believes that ensuring diversity for this number of Americans is a sufficient public interest for maintaining the PTAR restriction."

We concur in the SBA's suggestion that the Commission continue seeking ways to preserve the public interest benefits of the Rule while, if possible, imposing fewer restrictions on networks and their affiliates.

At the moment, however, other rules are already being eliminated. And, limitations are being relaxed. The industry is becoming more and more concentrated. The Commission should measure the effects of those changes and proceed carefully and deliberately.

As the Small Business Administration concluded: "The Commission spent much of the twenty years between 1970 and 1990 trying to control the power of the networks. This has allowed independent stations, fledgling networks, and a variety of program producers and distributors to live long and prosper. The Commission should maintain the

PTAR unless it finds compelling evidence to eliminate it. The evidence and arguments revealed in the NPRM do not provide the support needed to change the PTAR."

We agree.

Respectfully submitted,

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ACI
All American Television Distribution
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Bonny Dore Productions
Central City Productions, Inc.
Claster Television Incorporated
Dick Clark Productions, Inc.
FilmRoos
Lee Miller Productions
Loreen Arbus Productions, Inc.
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